

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

FOR THE

SEP 15 2009

DARRELL KLUGE,

Plaintiff,

V.

INTERNAL REVENUE SERVICE,

Defendant.

Case No. 0:09-cv-1763-DWF-JJG

**ANSWER**

COMES NOW the Internal Revenue Service and answers the allegations of the complaint as follows:

1. Admits.
2. Admits, except denies this action arises under 5 U.S.C. § 552a, and denies that jurisdiction is founded on 28 U.S.C. § 1346, and avers that to the extent jurisdiction exists, it is grounded in 5 U.S.C. § 552(a)(4)(B).
3. Admits the Plaintiff is a person within the meaning of the Freedom of Information Act (FOIA). The Service denies the remainder of paragraph 3, and avers that the Service is a bureau of the United States Department of the Treasury, which is an agency of the United States under the FOIA.
4. Admits that, pursuant to the FOIA, and the Privacy Act, 5 U.S.C. § 552a, the Plaintiff properly filed a request for information contained in administrative and investigative files, including but not limited to, all tax returns, revenue agent's

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U.S. DISTRICT COURT ST. PAUL

workpapers, transmittal slips, revenue agents' reports, case activity workpapers, and any files, records, correspondence, memoranda, or other documents regarding any proposals, recommendations, referrals, or other actions or suggested actions relating to the examination or investigation of his 2004, 2005, 2006, and 2007 federal income tax returns. Admits that the Plaintiff made a request for records under the Privacy Act, but denies that the Privacy Act applies to the instant action. Further admits that a copy of such a request is attached to the complaint as Exhibit 1. Further admits that a request was made on May 21, 2009. Denies that the request attached to the complaint as Exhibit 1 was made on May 21, 2009. Further denies that this request included information relating to the examination or investigation of his 2003 and 2008 federal income tax returns.

5. Denies, and avers that the Service's response on June 24, 2009 informed the Plaintiff that the Service needed until July 31, 2009 to provide a final response to the Plaintiff's request for records.

6. Denies.

7. Denies.

8. Denies.

9. Denies.

#### FIRST DEFENSE

10. This Court lacks subject matter jurisdiction in part because the Plaintiff failed to exhaust his administrative remedies as to records pertaining to tax years 2003 and 2008.

## SECOND DEFENSE

11. The Internal Revenue Service may withhold any responsive records or portions thereof that are exempt from disclosure pursuant to the exemptions contained in the FOIA.

## THIRD DEFENSE

12. The Plaintiff is not entitled to any relief beyond that provided under the FOIA.

## FOURTH DEFENSE

13. The Plaintiff has failed to state a claim upon which relief can be granted against the Internal Revenue Service under the FOIA.

## FIFTH DEFENSE

15. The Plaintiff never made a valid request for records under the FOIA for tax years 2003 and 2008.

WHEREFORE, having fully responded to the Plaintiff's complaint, the Internal Revenue Service, respectfully prays as follows:

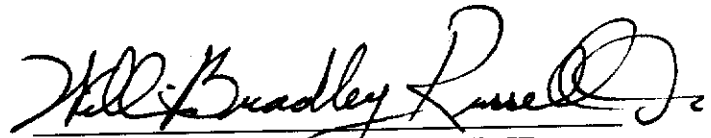
- A. That the Court dismiss the complaint with prejudice;
- B. That the Court grant the Internal Revenue Service the cost of its defense;  
and
- C. For such other and further relief as the Court finds just and proper under the circumstances.

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DATED: September 11, 2009.

B. TODD JONES  
United States Attorney

A handwritten signature in black ink, appearing to read "William Bradley Russell Jr.", written over a horizontal line.

WILLIAM BRADLEY RUSSELL JR.  
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Attorneys for the Defendant  
Internal Revenue Service

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing ANSWER has been made this 11th day of September, 2009, by certified mail and by electronic mail addressed to the following recipient:

Thomas E. Brever, Esquire  
2812 Anthony Lane, South  
Suite 200  
St. Anthony, Minnesota 55418

A handwritten signature in black ink, appearing to read "William Bradley Russell Jr.", written over a horizontal line.

WILLIAM BRADLEY RUSSELL JR.  
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